

**BEFORE THE
BOARD OF PODIATRIC MEDICINE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

File No. 1B-2007-185993

THOMAS REID ECTON, D.P.M.

**Doctor of Podiatric Medicine
License No. E 4330**

Respondent.


DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby accepted and adopted by the Board of Podiatric Medicine of the Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective at 5:00 p.m. on May 4, 2010.

DATED April 27, 2010

BOARD OF PODIATRIC MEDICINE



Karen L. Wrubel, D.P.M., President

1 EDMUND G. BROWN JR.
Attorney General of California
2 GAIL M. HEPPELL
Supervising Deputy Attorney General
3 MARA FAUST
Deputy Attorney General
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PODIATRIC MEDICINE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1B 2007 185993

13 **THOMAS REID ECTON, DPM**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 5120 Rock Creek Lane
Mission, Kansas 66205-3048

15 Podiatrist Certificate No. E 4330

16 Respondent.

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18 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
19 proceeding that the following matters are true:

20 PARTIES

21 1. James Rathlesberger (Complainant) is the Executive Officer of the Board of Podiatric
22 Medicine. He brought this action solely in his official capacity and is represented in this matter
23 by Edmund G. Brown Jr., Attorney General of the State of California, by Mara Faust, Deputy
24 Attorney General.

25 2. Thomas Reid Ecton, DPM (Respondent) is representing himself in this proceeding
26 and has chosen not to exercise his right to be represented by counsel.

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3. On or about May 17, 2001, the Board of Podiatric Medicine (Board) issued Podiatrist Certificate No. E 4330 to Respondent. Said license expired on January 31, 2009 and has not been renewed.

JURISDICTION

4. Accusation No. 1B 2007 185993 was filed before the Board of Podiatric Medicine (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 20, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1B 2007 185993 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 1B 2007 185993. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 1B 2007 185993, agrees that cause exists for discipline and hereby surrenders his Podiatrist Certificate No. E 4330 for the Board's formal acceptance.

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9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Podiatrist Certificate without further process.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Podiatric Medicine or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Podiatric Medicine. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Podiatric Medicine may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Podiatrist Certificate No. E 4330, issued to Respondent, Thomas Reid Ecton, DPM, is surrendered and accepted by the Board of Podiatric Medicine.

14. The surrender of Respondent's Podiatrist Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent.

1 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
2 license history with the Board.

3 15. Respondent shall lose all rights and privileges as a doctor of podiatric medicine in
4 California as of the effective date of the Board's Decision and Order.

5 16. Respondent shall cause to be delivered to the Board both his wall license certificate
6 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

7 17. If he ever applies for licensure or petitions for reinstatement in the State of California,
8 the Board shall treat it as a new application for licensure. Respondent must comply with all the
9 laws, regulations and procedures for licensure in effect at the time the application or petition is
10 filed, and all of the charges and allegations contained in Accusation No. 1B 2007 185993 shall be
11 deemed to be true, correct and admitted by Respondent when the Board determines whether to
12 grant or deny the application or petition.

13 18. Should Respondent ever apply or reapply for a new license or certification, or petition
14 for reinstatement of a license, by any other health care licensing agency in the State of California,
15 all of the charges and allegations contained in Accusation, No. 1B 2007 185993 shall be deemed
16 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
17 other proceeding seeking to deny or restrict licensure.

18 19. Respondent shall pay the Board its costs of investigation and enforcement in the
19 amount of \$10,052.16 prior to issuance of a new or reinstated license.

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DATED:

James R Chapman

ENDORSEMENT

Dated: February 22, 2010

EDMUND G. BROWN JR.
Attorney General of California
GAIL M. HEPPELL
Supervising Deputy Attorney General

MARA FAUST
Deputy Attorney General
Attorneys for Complainant

5

Exhibit A

Accusation No. 1B 2007 185993

1 EDMUND G. BROWN JR.
Attorney General of California
2 GAIL M. HEPPELL
Supervising Deputy Attorney General
3 MARA FAUST
Deputy Attorney General
4 State Bar No. 111729
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5 P.O. Box 944255
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6 Telephone: (916) 324-5358
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7 *Attorneys for Complainant*

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 20, 20 09
BY Valerie Moore ANALYST

8 **BEFORE THE**
9 **BOARD OF PODIATRIC MEDICINE**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1B 2007 185993

13 **THOMAS REID ECTON, DPM**

A C C U S A T I O N

14 5120 Rock Creek Lane
Mission, Kansas 66205-3048

15 Podiatrist's License No. E-4330

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. James Rathlesberger (Complainant) brings this Accusation solely in his official
20 capacity as the Executive Officer of the Board of Podiatric Medicine, Department of Consumer
21 Affairs.

22 2. On or about May 17, 2001, the Board of Podiatric Medicine issued Podiatrist's
23 License Number E-4330 to Thomas Reid Ecton, DPM (Respondent). Said license expired on
24 January 31, 2009 and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Podiatric Medicine (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2222 provides that all acts of unprofessional conduct prescribed by Chapter 5 are applicable to podiatrists as well as to physician and surgeons.

5. Section 2497 provides in pertinent part that the board may suspend, revoke, or impose probationary conditions upon, a certificate to practice podiatric medicine for any of the causes set forth in Article 12 (commencing with section 2220) in accordance with Section 2222.

6. Section 2234 of the Code states:

"The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical Practice Act].

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

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1 "(d) Incompetence..."

2 7. Section 2266 of the Code states: "The failure of a physician and surgeon to maintain
3 adequate and accurate records relating to the provision of services to their patients constitutes
4 unprofessional conduct."

5 8. Section 2497.5(a) states that "The board may request the administrative law judge,
6 under his or her proposed decision in resolution of a disciplinary proceeding before the board, to
7 direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to exceed
8 the actual and reasonable costs of the investigation and prosecution of the case."

9 FIRST CAUSE FOR DISCIPLINE

10 (Repeated Negligent Acts)

11 9. Respondent is subject to disciplinary action under section 2234(c) in that he
12 repeatedly failed to adequately secure internal fixation with hardware/pins and/or adequately
13 reduce a fracture in surgical procedures on eight patients. The circumstances are as follows:

14 PATIENT E.F.¹

15 10. On or about March 31, 2007, respondent diagnosed patient E.F., (medical record
16 #07-1085), with a tri-malleolar ankle fracture, and the respondent performed a surgical repair
17 with open reduction and internal fixation. The internal fixation was inadequate with tension band
18 wiring technique too long and incomplete reduction of fractures, which resulted in a post
19 operative non union, subsequently requiring an additional operation to reduce the fractures.

20 11. The post operative progress report was incomplete and the operative report stated that
21 "good fixation was accomplished." No immediate post operative x-rays were documented, and
22 no assistant surgeon was used during the procedure. Respondent's treatment of patient E.F.
23 constitutes a departure from the standard of care.

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27 ¹ To protect the patient's privacy, they will be referred to by their initials and their full
28 names will be provided in discovery.

PATIENT E.J.

12. On or about July 20, 2005, respondent diagnosed patient E.J., (medical record #07-1085), with a tri-malleolar ankle fracture, and the respondent performed a surgical repair with open reduction and internal fixation. There was inadequate reduction of the fractures, which resulted in instability of the ankle joint, and required re-operation with arthrodesis (fusion) of the joint. The medial malleolar fracture remained displaced medially over 1.0 cm post operatively. Respondent's treatment of patient E.J. constitutes a departure from the standard of care.

PATIENT E.A.

13. On or about August 21, 2006, respondent diagnosed patient E.A., (medical record #07-1087), with a Lisfranc's joint dislocation, and the respondent performed a surgical repair with open reduction and internal fixation of the second metatarsal due to the traction devise being inoperable. Respondent placed two compression screws across the patient's first and second metatarsal-cuneiform joints. The screw fixation did not achieve complete reduction of these joints, which resulted in displacement. No assistant surgeon was used in this procedure. Respondent's treatment of patient E.A. constitutes a departure from the standard of care.

PATIENT K.R.

14. On or about February 3, 2007, respondent diagnosed patient K.R., (medical record #07-1093), with a tri-malleolar ankle fracture, and the respondent performed a surgical repair with open reduction and internal fixation. The post operative x-rays show inadequate reduction of the fractures as well as the ankle mortise. The fibular fracture was not reduced and no lateral compression plate was utilized. The interfragmentary screws were too short and did not stabilize the fracture. There was documentation of intraoperative use of fluroscopy without the appropriate license. No assistant surgeon was used during the procedure. Respondent's treatment of patient K.R. constitutes a departure from the standard of care.

PATIENT K.P.

15. On or about June 6, 2007, respondent diagnosed patient K.P., (medical record #07-1094), with a posterior malleolar fracture of the distal tibia and respondent performed a surgical repair with open reduction and internal fixation of the displaced ankle fracture. Post

1 surgically, there was an incomplete reduction of the posterior malleolar fracture fragment, with a
2 compression screw that was too short and did not provide compression across the fracture. The
3 fracture fragment remained displaced with inadequate reduction. The operative report was vague
4 and incomplete in the description of the procedure. No assistant surgeon was used during the
5 procedure. Respondent's treatment of patient K.P. constitutes a departure from the standard of
6 care.

7 PATIENT R.W.

8 16. On or about May 31, 2007, respondent diagnosed patient R.W., (medical record
9 #07-1098), with displaced metatarsal neck fractures of the second, third, and fourth right foot and
10 respondent performed percutaneous pinning of the unstable fractures. There was inadequate
11 reduction of the metatarsal fractures with kirshner wire pinning, and anatomical alignment was
12 not achieved. The operative report was incomplete and no assistant surgeon was utilized during
13 the procedure. Respondent's treatment of patient R. W. constitutes a departure from the standard
14 of care.

15 PATIENT N.B.

16 17. On or about January 19; 2007, respondent diagnosed patient N. B. (medical record
17 #07-1110), with a fracture of the fibula, left ankle and respondent performed a surgical repair
18 with a single screw fixation, placed across the fracture for reduction. The single screw was too
19 long and abutted the lateral aspect of the tibia and distracted the fibular fracture. Respondent's
20 treatment of patient N. B. constitutes a departure from the standard of care.

21 PATIENT F.A.

22 18. On or about March 31, 2007, respondent diagnosed patient F.A. (medical record
23 #07-1111), with a spiral distal fibular fracture of the ankle joint and respondent reduced the
24 fracture with two compression screws, which appeared to be too long and the fibular fracture
25 remained displaced and no lateral neutralization plate was used. There was no documentation of
26 intra-operative testing of the integrity of the syndesmosis, as well as no reduction of the posterior
27 malleolar fracture fragment. Respondent's treatment of patient F.A. constitutes a departure from
28 the standard of care.

1 19. Respondent's conduct as set forth in paragraphs 5-18, above, constitutes
2 unprofessional conduct and repeated negligent acts and subjects his certificate to discipline
3 pursuant to Code section 2234 (c).

4 SECOND CAUSE FOR DISCIPLINE

5 (Incompetence)

6 20. Respondent is subject to disciplinary action under section 2234(d) in that respondent
7 demonstrated a lack of knowledge, skill, training and experience with respect to fracture care and
8 surgical skills on eight patients. The circumstances are as follows:

9 21. Complainant refers to and, by the reference, incorporates herein paragraphs 10
10 through 18, inclusive, above as though fully set forth.

11 22. On all eight of these patients, respondent failed to achieve complete and/or stable
12 reduction.

13 THIRD CAUSE FOR DISCIPLINE

14 (Failure to Maintain adequate and accurate records)

15 23. Respondent is subject to disciplinary action under section 2266 in that respondent
16 kept poor medical documentation within the operative and post operative reports. The respondent
17 also operated an intra-operative fluoroscopy devise without appropriate licensure. The
18 circumstances are as follows:

19 24. Complainant refers to and, by the reference, incorporates herein paragraphs 10-11,
20 14-16, and 18 inclusive, above as though fully set forth,

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Podiatric Medicine issue a decision:

24 1. Revoking or suspending Podiatrist's License Number E-4330, issued to Thomas Reid
25 Ecton, DPM.

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1 2. Ordering Thomas Reid Ecton, DPM to pay the Board of Podiatric Medicine the
2 reasonable costs of the investigation and enforcement of this case, and, if placed on probation, the
3 costs of probation monitoring;

4 3. Taking such other and further action as deemed necessary and proper.

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6 DATED: August 20, 2009


JAMES RATHLESBERGER
Executive Officer
Board of Podiatric Medicine
Department of Consumer Affairs
State of California
Complainant

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